



PATENT
BRENDA 5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Brenda Pomerance Confirmation: 7218
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Serial No.: 09/543,049 Examiner: J. Hayes
Title: AUTOMATED ALTERNATIVE DISPUTE RESOLUTION

DECLARATION OF CHRISTINA KALLAS

1. I am an attorney in private practice, employed by Law Office of Christina Kallas, 5009 Broadway, Suite 604, New York, New York 10034.
2. I am an arbitrator for the National Association of Securities Dealers (NASD). I have served as an arbitrator in about 30 arbitrations, and as the Chair of several arbitration panels. I have served as a mediator or co-mediator in about 75 - 100 mediations. Since 1994, I have taken or given training courses in the area of arbitration, mediation and negotiation at universities, bar associations, professional societies, government agencies and regulatory agencies. I am skilled in the art of dispute resolution.
3. I have reviewed the following:
 - a. U.S. Patent No. 5,895,450 (Sloo),
 - b. the Online Resolution Press Release dated March 23, 2000, "Online Mediation Offered for Resolving E-Commerce Disputes" (OM), and
 - c. Eisen, Joel B., "Are we ready for mediation in cyberspace", Brigham Young Univ. Law Review, vol. 1998, no. 4, pp 1305-1358, 1998 (Eisen)
4. Sloo discloses a computer system that collects a complaint from a complainer (col. 4, lines 45 - col. 5, line 2) and delivers it anonymously to a target company (col. 6, lines 43-46). The complainer and target company can directly negotiate via email (col. 7, line 42 - col. 8, line 4), with the complainer remaining anonymous (col. 5, lines 12-19). The complainer can request that the dispute evidenced by the complaint be decided by a third party (col. 8, lines 5-49) or the computer system (col. 9, line 57 - col. 10, line 14). Sloo's system collects information about who the complainer is in order to prevent wrongful use of the complaint system (col. 4, lines 55-60). In short, Sloo's computer system

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collects a complaint from a complainer, enables anonymous direct negotiation and allows the complainer to request arbitration of the dispute arising out of the complaint.

5. A person interested in using the OM system is directed to a website wherein a complainer fills out a form and emails it to the Mediation Information and Resource Center. The Center contacts the other party to the dispute, and if the other party agrees to mediation, the Center selects a human mediator who conducts a mediation between the parties using email, instant messaging and group discussions, at a rate of \$50-100 per hour (paragraph bridging pages 1-2).
6. Eisen argues that an online setting, in which all email is assumed to pass through a human mediator, is not suitable for mediation as it precludes mediators from using their face-to-face skills such as listening and processing oral information (page 1, bottom; page 3, second paragraph), which are historically fundamental to the mediator's role.
7. While arbitration and mediation are both techniques for dispute resolution, the role of an arbitrator is quite different from the role of a mediator. For example:
 - a. an arbitrator must not have private discussions with any of the parties to the dispute, whereas a mediator, as an integral part of the mediation process, may well decide to use this 'caucusing technique' as a deliberate strategy in resolving the dispute;
 - b. an arbitrator's purpose is to render a decision that resolves the dispute, whereas a mediator's purpose is to help the parties craft their own solution, regardless of the mediator's opinion as to the 'best' or 'fairest' outcome;
 - c. an arbitrator ends the arbitration by issuing a decision, whereas a mediator can end a mediation even though the dispute remains unresolved; and
 - d. if a party serves as mediator to a dispute, the party should decline to serve as arbitrator because while serving as mediator, the mediator has become privy to confidential information that may not be available to someone acting as an arbitrator.
8. One of ordinary skill in the art of mediation considers mediation to be an art, with mediators conducting mediations according to their own personal styles, often relying upon instinct.

9. One of ordinary skill in the art of arbitration considers arbitration to be akin to an adversarial court judgment conducted in accordance with less formal evidentiary rules than a traditional court action and, ideally, resulting in a faster resolution than a traditional court action.
10. Since mediation techniques are so different from arbitration techniques, one of ordinary skill in the art of dispute resolution would not try to combine the teachings of OM, relating to mediation, with those of Sloo, relating to arbitration, in the same proceeding.
11. Since mediation techniques are so different from arbitration techniques, one of ordinary skill in the art would not try to combine the teachings of Eisen, relating to mediation, with those of Sloo, relating to arbitration, in the same proceeding.
12. If a dispute resolver attempted to combine the approaches of Sloo and OM, the resulting combination would not include a computer system that collects input concerning the emotional state of a complainer. If the approaches of Sloo and OM had to be combined, a dispute resolver having ordinary skill in the art of dispute resolution would modify Sloo's email direct negotiation approach to be an online mediation in which the mediator directly addresses the emotional states of both parties using his or her own personal techniques as a fundamental part of the mediation process.
13. If a dispute resolver attempted to combine the approaches of Sloo and Eisen, the resulting combination would not include a computer system that collects input concerning the emotional state of a complainer. If the approaches of Sloo and Eisen had to be combined, a dispute resolver having ordinary skill in the art of dispute resolution would modify Sloo's email direct negotiation approach to be an online mediation in which the mediator directly addresses the emotional states of both parties using his or her own personal techniques as a fundamental part of the mediation process.
14. One of ordinary skill in the art of dispute resolution would not modify Sloo's system so that the complainer is named (non-anonymous) to the target of the complaint. For Sloo, complainer anonymity is important as a means to overcome the problem of private complaint systems which do not inform other consumers about complaints against those providing services or merchandise to the public (col. 1, lines 17-25). Sloo, as is, enables complainers who want to be known to the target to reveal their identity in email direct negotiation. Sloo deliberately chose to provide for anonymous complaining in contrast to

the prior art, and to a dispute resolver of ordinary skill, naming the complainer would undermine the essence of Sloo's system, which is designed to encourage people to be honest in their complaints without fear of retribution or ridicule.

15. One of ordinary skill in the art of dispute resolution would not modify Sloo's system to suggest a remedy to a complainer during filing of the complaint. Sloo's "Automated Decision Maker" enables a complainer to determine the likely computer-generated decision of a dispute before filing a complaint (col. 10, lines 48-52 and col. 11, lines 21-36); and Sloo chose to have this be separate from the complaint filing process. To one of ordinary skill in the art of dispute resolution, changing the complaint filing process so that the computer suggests a result to the complainer during complaint filing would change Sloo's fundamental dynamics and create a system substantively different than Sloo's system.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18 of the United States Code, Section 1001, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2/13/04
Date


Christina Kallas